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April 27, 2011

Mr. Corbin R. Davis
Supreme Court Clerk
Michigan Supreme Court
PO Box 30052
Lansing, MI 48909



Re: ADM File No. 2010-17

Dear Mr. Davis:

I am writing in full support of the adoption of the proposed amendment to MCR 3.707 (ADM File No: 2010-17), the court rule governing modifications, terminations and extensions of personal protection orders. While I adopt the thoughts as expressed by my colleague, Donovan Visser in his letter of March 7, 2011, I add some thoughts on changing MCR 3.707(B)(1) as well.

It appears that the proposed amendment to 3.707(A)(1)(b) is clarifying the right of a respondent to file a motion to modify or terminate an ex parte order extending a personal protection order. If this proposed amendment is adopted, then 3.707(B)(1) (the court rule dealing with extensions of PPO's) should be amended as well because there is limiting language within the rule. This court rule states in relevant part (emphasis added):

- (1) *Time for Filing.* The petitioner may file an ex parte motion to extend the effectiveness of the order, without hearing, by requesting a new expiration date...

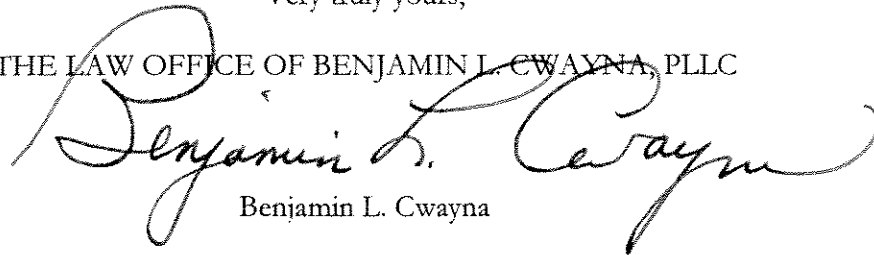
As my colleague, Mr. Visser correctly notes, this "without hearing" language in the current MCR 3.707(B)(1) is being interpreted in at least one Circuit to deny respondents in PPO cases the right to file motions to object to, terminate or modify ex parte extensions of existing PPO's. This interpretation, which defies basic and fundamental due process rights guaranteed under the Constitution, abrogates the right of a respondent to have a hearing or a meaningful opportunity to be heard on *any* ex parte extension of a PPO. As a result, a petitioner can theoretically continue to get ex parte extensions of a PPO every time the PPO is close to expiration and the respondent can never have a hearing on the extension's merits. While I doubt the "without hearing" language was intended to defeat such a basic right and feel that it was actually intended to convey that a petitioner could at get the PPO extension initially without a hearing, it is nonetheless being used to deny a respondent's opportunity to be heard.

Therefore, if 3.707(A)(b) is amended to allow for a motion and hearing to modify or terminate an extension of a PPO as it looks like it does, then the language "without hearing" should be struck from MCR 3.707(B)(1) since it would contradict the changes being sought and would clarify any confusion that may still exist on this issue.

For these reasons, I endorse the proposed amendment subject to changing 3.707(B)(1) as well.

Very truly yours,

THE LAW OFFICE OF BENJAMIN L. CWAYNA, PLLC

A large, stylized handwritten signature in black ink, reading "Benjamin L. Cwayna". The signature is written over the printed name and firm name.

Benjamin L. Cwayna